

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 98-0675 IT**

**Gross Income Tax  
For Tax Periods: 1993 and 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Gross Income Tax — Telecommunications Services**

**Authority:** IC 6-22.1-2-2;  
45 IAC 1-1-121, 45 IAC 1-1-124;

Taxpayer protests the assessment of Indiana gross income tax on its interstate telecommunication services.

**STATEMENT OF FACTS**

Taxpayer provides private line transmission services to (primarily) long distance telecommunications carriers. In the provision of these services, Taxpayer operates microwave transmission equipment on a regional basis. These regional circuits overlap creating a national telecommunications transmission network. Taxpayer has terminals and equipment at three (3) Indiana locations.

In computing its Indiana gross income, Taxpayer included only the receipts derived from its transport of "intrastate" communications. That is, Taxpayer limited its gross income to those receipts derived from the transport of communications over circuits that both originate and terminate in Indiana.

Audit, however, contends Taxpayer is not a "communications carrier" and cannot adopt the relatively narrow definition of "intrastate" afforded to "communications carriers." Rather, Audit characterized Taxpayer's activities as the provision of private line transmission services *to communications carriers*. And as with any service provider, Taxpayer must, according to Audit, include in its Indiana gross income all receipts attributable to its Indiana activities. Since Taxpayer failed to do so, Audit proposed additional assessments of gross income tax.

**I. Gross Income Tax — Telecommunication Services**

## **DISCUSSION**

Taxpayer operates a nationwide private line telecommunications network. Specifically, Taxpayer supplies long-distance communications carriers with private line point-to-point transmission access. Long-distance carriers often require, for a variety of reasons, additional private line access in order to complete transmissions of voice and data communications. Taxpayer (among others) provides this additional private line access via its regional circuits. During the audit period, Taxpayer had private line contracts with over two hundred (200) long-distance carriers.

A private line is an unswitched telecommunications transmission circuit used to transport “traffic” between LATAs (local access and transport areas). Taxpayer markets its private line capacity to both facilities based and non-facilities based carriers. Taxpayer explains:

During the audit period, taxpayer’s income came from “private line” revenue. A private line is an unswitched telecommunications circuit used by customers to transport their data between LATA’s (Local Access and Transport Areas). Calls being transmitted over a private line circuit for a customer are generally routed by the customer through a switch to a receiving terminal in taxpayer’s network. Taxpayer then transmits the signals over a private line to the terminal where the signal exits the taxpayer’s network. The signals are then generally routed by the customer through another switch and to the call recipient through a[n] LEC (local exchange carrier).

According to Audit, Taxpayer typically bills its customers (the long-distance carriers) a fixed monthly rate based on the capacity or length of the circuit—regardless of the amount of “traffic” actually transported over the circuit.

Initially, Taxpayer arrived at its gross income from Indiana sources by employing a “route/mile” formula. Taxpayer apportioned income to various states based on the circuit distance in each applicable state. Using this methodology, Taxpayer included in its Indiana apportionment formula (1) income from circuits with origin and destination within Indiana, (2) income from circuits with origin or destination within Indiana, and (3) income from circuits across Indiana with origin and destination outside Indiana.

Subsequently, amended returns were filed. Taxpayer reduced its Indiana gross income by limiting inclusion to only that income derived from telecommunications circuits both originating and terminating in Indiana. Income previously included in Taxpayer’s Indiana gross income was now characterized as exempt interstate income.

Taxpayer relies on 45 IAC 1-1-124(b), which instructs:

Income from wire communications including telephone and telegraph lines, is taxable if derived from carrying communications between two (2) points in Indiana. It is not taxable if derived from carrying communications between a point outside Indiana and a point in Indiana, or from a point outside Indiana into and across the State to a point outside Indiana.

*(Note: 45 IAC 1 was repealed effective January 1, 1999, and replaced by 45 IAC 1.1.)*

Audit contends Taxpayer's activities are different from those addressed in 45 IAC 1-1-124(b). Specifically, Audit determined Taxpayer did not "carry" communications. Rather, Taxpayer offered a service that allowed its customers (i.e., the long-distance carriers) to use capacity on its transmission network.

Implicit in the taxing scheme described in 45 IAC 1-1-124(b) is the requirement that a telecommunications carrier derive income from "carrying communications" originating and terminating at identifiable locations. The paradigm associated with the taxation of income derived from "carrying communications" presumes transmission of voice or data from an originating source to a terminating destination. Otherwise, it would be impossible, under the regulation, to distinguish exempt "interstate" transmissions from non-exempt "intrastate" ones.

Furthermore, the computation of a carrier's Indiana gross income from "carrying communications" can only be determined on a transactional basis. The relevant transaction is represented by the transmission of communications by the carrier from the source to its intended destination. Consequently, one must pinpoint the origination and terminus of each transmission in order to determine the taxability of the income derived from such transmissions. For example, if a particular transmission originates in Batesville, Indiana, and terminates in Bicknell, Indiana, the receipts derived from "carrying" this intrastate communication must be included in the carrier's Indiana gross income. Conversely, if the transmission either originates or terminates in Rockford, Illinois (or any location outside Indiana), the interstate nature of the transaction would serve to exclude such receipts from the carrier's Indiana gross income.

Unlike its customers (i.e., the long distance carriers), taxpayer provides a more intermediate data transmission service. Taxpayer provides interexchange access to facilitate completion of long-distance data communications transmissions by long-distance carriers. Nevertheless, taxpayer is not "carrying communications" as that term is used in 45 IAC 1-1-124(b). Rather, taxpayer offers a service that allows its communication carrier customers to use—for a predetermined contracted amount—capacity on taxpayer's transmission network. Taxpayer, as a provider of services within Indiana, must include in its Indiana gross income all income derived from such services. That is, taxpayer must include all income derived from customer data transmissions that utilize taxpayer's Indiana data transmission network.

A final caveat: a determination of the taxability of receipts derived from Taxpayer's private-line service activities does not depend on the nature of the underlying communications transmissions performed by Taxpayer's customers (i.e., the long-distance carriers); rather, such determination is a function of the utility of Taxpayer's Indiana private line circuits in the context of its customers' transmissions.

### **FINDING**

Taxpayer's protest is denied.